

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #9	CCRB Case #: 201803376	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/28/2018 3:38 AM	Location of Incident: 25-91 Steinway Street, 112th Precinct Stationhouse	Precinct: 114	18 Mo. SOL 10/28/2019	EO SOL 10/28/2019	
Date/Time CV Reported Tue, 05/01/2018 10:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/01/2018 10:06 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Clifford Desir	20421	958496	114 PCT
2. LT Victor Crespo	00000	929959	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christophe Roach	03732	945296	114 PCT
2. POM Jelani Obafemi	04424	959854	114 PCT
3. POF Anna Piechowicz	22043	959896	114 PCT
4. POM Keith Lang	23218	957757	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Clifford Desir	Abuse: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir questioned § 87(2)(b)	
B.POM Clifford Desir	Abuse: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir threatened to arrest § 87(2)(b)	
C.POM Clifford Desir	Off. Language: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
D.LT Victor Crespo	Abuse: At 25-91 Steinway Street in Queens, Lieutenant Victor Crespo searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Clifford Desir	Force: At the 112th Precinct Stationhouse in Queens, Police Officer Clifford Desir tightly handcuffed § 87(2)(b)	

Case Summary

On May 1, 2018, § 87(2)(b) filed this complaint with the CCRB via telephone [BR 01].

On April 28, 2018, at approximately 3:38 a.m., § 87(2)(b) parked his vehicle in a bus stop in front of 25-91 Steinway Street in Queens. PO Clifford Desir and PO Jelani Obafemi, both of the 114th Precinct, stopped § 87(2)(b)'s vehicle. PO Desir approached § 87(2)(b)'s window and asked how much he had to drink (**Allegation A: Abuse of Authority**, § 87(2)(g)). After § 87(2)(b) refused to take a portable breath test, PO Desir allegedly stated, "If you're not taking this breathalyzer you're going to jail" (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Desir then handcuffed § 87(2)(b) and walked him to his patrol vehicle. As § 87(2)(b) reached the RMP, he allegedly observed an officer, identified by the investigation as Lt. Victor Crespo, also of the 114th Precinct, search his vehicle (**Allegation C: Abuse of Authority**, § 87(2)(g)). While discussing what to do with § 87(2)(b)'s vehicle, PO Desir allegedly refused to allow one of the female occupants to drive the vehicle from the scene and denied that either woman was § 87(2)(b)'s spouse (**Allegation D: Offensive Language**, § 87(2)(g)). PO Desir allegedly further stated, "If you're not having sex with her, that's not your spouse" (**Allegation D: Offensive Language continued**, § 87(2)(g)). PO Desir and PO Obafemi then transported § 87(2)(b) to the 112th Precinct Stationhouse where they determined that § 87(2)(b) was not operating a vehicle while intoxicated. PO Desir and PO Obafemi transported § 87(2)(b) to the 114th Precinct. As § 87(2)(b) entered the RMP, PO Desir allegedly tightened his handcuffs (**Allegation E: Force**, § 87(2)(g)). PO Desir issued § 87(2)(b) a summons for unlawful window tints [BR 02]. There is no video evidence of this incident.

Findings and Recommendations

Allegation A – Abuse of Authority: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir questioned § 87(2)(b)

Allegation B – Abuse of Authority: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b) consumed alcohol prior to this incident, that PO Desir questioned § 87(2)(b) about how much he had to drink, and that § 87(2)(b) refused to take a portable breath test. It is further undisputed that § 87(2)(b) was parked in a bus stop when he was stopped by PO Desir and PO Obafemi. Therefore, a stop allegation was not pled. It remains disputed whether PO Desir threatened to arrest § 87(2)(b).

§ 87(2)(b) was interviewed at the CCRB on May 4, 2018 [BR 03]. He stated that he consumed roughly three beers at approximately 8:00 or 9:00 p.m. the day of the incident; however, he did not finish the beers and denied that he was or appeared to be intoxicated. He initially stated that watery eyes alone are not an indication that someone is intoxicated. However, when questioned later, § 87(2)(b) stated that although he does have chronic allergies, he was not suffering from watery, red, or puffy eyes during this incident. § 87(2)(b) stated that he attended his sister's wedding the same day and was tired from the event. PO Desir asked § 87(2)(b) how much he had to drink and later instructed § 87(2)(b) to take a breathalyzer exam. § 87(2)(b) refused to take the exam so PO Desir then instructed § 87(2)(b) to exit his vehicle and said, "If you're not taking this breathalyzer you're going to jail." § 87(2)(b) exited the vehicle and PO Desir handcuffed him.

§ 87(2)(b) provided the phone number for § 87(2)(b) who was in the vehicle at the time of this incident. § 87(2)(b) stated that § 87(2)(b) and her boyfriend, § 87(2)(b) (last name unknown), were also in the vehicle and witnessed the incident. However, § 87(2)(b) did not have any contact information for § 87(2)(b) or § 87(2)(b). Five calls were placed to § 87(2)(b) between May 31, 2018, and June 29, 2018 [BRs 04, 05, 06, 07, 08]. While leaving a voice message on June 29, 2018, § 87(2)(b)

§ 87(2)(b) contacted the CCRB and stated that she did not wish to provide a statement about the incident [BR 08 continued]. She also refused to provide contact information for her daughter, § 87(2)(b) or § 87(2)(b). CLEAR and LexisNexis searches performed for § 87(2)(b) yielded no results. Absent additional information for § 87(2)(b) searches for contact information could not be conducted. Due to the above, witness statements were not obtained.

PO Desir was interviewed at the CCRB on July 20, 2018 [BR 09]. He stated that as he approached § 87(2)(b)'s vehicle, he could smell alcohol emanating from the driver's side. Once PO Desir began speaking to § 87(2)(b) he smelled alcohol on § 87(2)(b)'s breath. § 87(2)(b) also had watery and blood shot eyes and his speech was slurred and delayed. PO Desir asked § 87(2)(b) if he had anything to drink and § 87(2)(b) responded that he consumed alcohol "earlier." PO Desir did not recall if § 87(2)(b) provided a more specific time frame or if § 87(2)(b) said how much he consumed. Within a few minutes, PO Desir asked § 87(2)(b) to step out of the vehicle. PO Desir then asked § 87(2)(b) to take a portable breath test but § 87(2)(b) refused. PO Desir denied that he threatened to arrest § 87(2)(b) for refusing to take the breathalyzer; however, he did inform § 87(2)(b) that if he refused to take the breathalyzer, he would be taken to the 112th Precinct Stationhouse for testing. PO Desir was not aware of anything § 87(2)(b) could have been arrested for.

PO Obafemi was interviewed at the CCRB on August 3, 2018 [BR 10]. He stated that while he was standing on the passenger side of the vehicle, he heard PO Desir ask § 87(2)(b) if he had been drinking and heard him tell § 87(2)(b) that he smelled alcohol in the vehicle and that § 87(2)(b)'s eyes were slightly glossy. § 87(2)(b) responded that he had not been drinking. Once § 87(2)(b) exited the vehicle, PO Obafemi also noticed that he had glossy eyes and smelled of alcohol. PO Obafemi did not notice any other signs of intoxication. At the back of the vehicle, PO Desir informed § 87(2)(b) that if he did not take the breath test, he would be brought back to the 112th Precinct Stationhouse for testing. PO Obafemi did not hear PO Desir threaten to arrest § 87(2)(b) in any context and stated that no officer mentioned arrest in § 87(2)(b)'s presence.

Sgt. Roach was interviewed at the CCRB on August 3, 2018 [BR 11]. He stated that when he arrived on scene, § 87(2)(b) was already seated in the back of the patrol vehicle. He did not see or hear any interaction between § 87(2)(b) and PO Desir. PO Desir informed Sgt. Roach that § 87(2)(b) had slurred speech and watery and red eyes. However, Sgt. Roach did not personally observe this.

Lt. Crespo was interviewed at the CCRB on August 9, 2018 [BR 12]. He stated that he was on scene for two to three minutes and said that although PO Desir was facing § 87(2)(b) he did not know if PO Desir was speaking to him. Lt. Crespo did not hear PO Desir ask § 87(2)(b) any questions pertaining to alcohol consumption and did not recall hearing PO Desir mention arrest to § 87(2)(b). Lt. Crespo believed PO Desir informed him that § 87(2)(b) had watery eyes and smelled of alcohol. However, Lt. Crespo did not observe these symptoms and said that he did not get "too close" to § 87(2)(b). Lt. Crespo could not estimate how far from § 87(2)(b) he stood.

PO Keith Lang [BR 13] and PO Anna Piechowicz [BR 14], both of the 114th Precinct, were interviewed at the CCRB on August 13, 2018, and August 17, 2018, respectively. Neither officer recalled this incident.

PO Desir's memo book entry for this incident notes that the car stop occurred at 3:44 a.m., that § 87(2)(b) refused a portable breath test on scene, that his eyes were blood shot and watery, and there was a faint smell of alcohol [BR 15].

Event D18042803498 [BR 16] was generated at 3:38 a.m. for a car stop. At 3:45 a.m., an IDTU technician was requested to respond to the 112th Precinct Stationhouse.

On May 4, 2018, the Field Team traveled to the incident location and observed exterior cameras at Melody Café, located at 25-95 Steinway Street. However, the business was closed at

the time of their visit. On May 9, 2018, an employee of the café, § 87(2)(b) stated that the footage would only be shown to police officers and instructed that the CCRB not contact him further. He was advised that someone would be sent to the location with a subpoena for the footage. On May 14, 2018, the Field Team reviewed surveillance footage at Melody Café and determined that footage from this incident was already deleted from the server. The investigation did not identify any additional leads for video footage.

As noted above, PO Desir transported § 87(2)(b) to the 112th Precinct where he was administered a sobriety exam at 4:02 a.m. § 87(2)(b)'s BAC was recorded as 0.014. In the IDTU report [BR 17], PO Desir noted that at the scene of the stop, § 87(2)(b)'s breath had a faint smell of alcohol, his face was flushed, his eyes were watery and bloodshot, he was swaying, and had slurred speech. The IDTU technician, PO Daniel Patti of Highway 3, noted that at the time of the sobriety exam, § 87(2)(b)'s breath had no odor of alcohol, § 87(2)(b)'s speech was clear, and his balance was steady. However, PO Patti did note that § 87(2)(b)'s eyes were bloodshot. PO Patti concluded, based on the breathalyzer exam and a horizontal gaze nystagmus test, that § 87(2)(b) was not under the influence of alcohol.

According to People v. DeBour 40 N.Y.2d 210 (1976), officers may ask pointed questions when they have a founded suspicion that criminality may be afoot [BR 22].

As per the New York State Department of Motor Vehicles, the penalty for refusing to submit to a chemical test is a fine of \$500 and a revoked license for one year [BR 18]. There is no imprisonment penalty.

§ 87(2)(g)

[REDACTED]

Allegation C – Offensive Language: At 25-91 Steinway Street in Queens, Police Officer Clifford Desir made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)

It remains disputed whether PO Desir made any comments regarding § 87(2)(b)'s sexual orientation.

§ 87(2)(b) stated that he asked PO Desir if § 87(2)(b) or § 87(2)(b) could drive his vehicle from the scene of the stop, rather than having an officer drive it to the stationhouse. PO Desir asked if the women lived with § 87(2)(b) and § 87(2)(b) informed him that they do not. PO Desir then responded that they cannot give the vehicle to someone that is not § 87(2)(b)'s spouse or someone that does not live with him. § 87(2)(b) responded, "They're my spouse." PO Desir looked at § 87(2)(b) laughed, and said, "That is not your spouse/they're not your spouse." § 87(2)(b) responded, "So I gotta be fucking her?" PO

Desir then said, "If you're not having sex with her, that's not your spouse." § 87(2)(b) believed that PO Desir concluded that he is homosexual based on his attire.

As noted above, statements could not be obtained from § 87(2)(b)

or § 87(2)(b)

Neither PO Desir nor PO Obafemi recalled any discussion on scene about what to do with § 87(2)(b)'s vehicle or if § 87(2)(b) requested that the women drive his vehicle from the location. PO Desir did not recall if there was any conversation about whether either woman was § 87(2)(b)'s spouse and did not recall asking § 87(2)(b) if the women lived with him. PO Obafemi did not recall if PO Desir asked § 87(2)(b) any questions pertaining to his relationship to the women. Both officers denied that § 87(2)(b)'s sexual orientation came up in any context on scene and both denied that PO Desir stated, "If you're not having sex with her, it's not your spouse." PO Desir further denied telling § 87(2)(b) that the women were not his spouse. PO Obafemi did not recall hearing PO Desir make that statement.

As discussed above, Sgt. Roach did not see any interaction between § 87(2)(b) and PO Desir and Lt. Crespo was unsure if PO Desir spoke to § 87(2)(b) on scene. Both denied that § 87(2)(b)'s sexual orientation came up in any context. As also noted above, neither PO Lang nor PO Piechowicz recalled this incident.

§ 87(2)(g)

Allegation D – Abuse of Authority: At 25-91 Steinway Street in Queens, Lieutenant Victor Crespo searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that an officer drove § 87(2)(b)'s vehicle from the scene of this incident; however, it remains disputed if Lt. Crespo searched § 87(2)(b)'s vehicle prior to its transport.

§ 87(2)(b) stated that as PO Desir escorted him to his patrol vehicle, an officer, described as a white male with a slightly stocky build, 5'9" to 5'10" tall, in his upper 40s, unknown hair color, in uniform wearing a white shirt, ran to § 87(2)(b)'s vehicle and instructed everyone to exit the vehicle. As per the Tour 1 Roll Call from the 114th Precinct [BR 19], Lt. Crespo was the only lieutenant working and was the highest-ranking officer assigned to the midnight tour. As per the MOS photo terminal, Lt. Crespo is a Hispanic male, stands 5'5" tall, weighs 190 pounds, and has a medium-tan complexion. Although Lt. Crespo is not an exact match to the physical description § 87(2)(b) provided, § 87(2)(b) stated that he had an interrupted view of the alleged search and of the subject officer. Given that Lt. Crespo acknowledged responding to this incident and was the only white shirt officer working at the time of this incident, the allegation that an officer searched § 87(2)(b)'s vehicle was pled against him. § 87(2)(b) alleged that Lt. Crespo looked in the cupholders of the front center console, searched the back seat, and then searched the trunk.

As explained above, statements could not be obtained from § 87(2)(b)

or § 87(2)(b)

Lt. Crespo denied entering § 87(2)(b)'s vehicle and stated that he did not participate in nor was he aware of any search of § 87(2)(b)'s vehicle. PO Desir, PO Obafemi, and Sgt. Roach were all consistent that they were not aware of any officer searching § 87(2)(b)'s vehicle. As discussed above, PO Lang and PO Piechowicz had no recollection of this incident.

§ 87(2)(g)

Allegation E – Force: At the 112th Precinct Stationhouse in Queens, Police Officer Clifford Desir tightly handcuffed § 87(2)(b)

It is undisputed that PO Desir handcuffed § 87(2)(b). It remains disputed if PO Desir subsequently tightened § 87(2)(b)'s handcuffs.

§ 87(2)(b) stated that he repeatedly complained that his handcuffs were too tight both on scene and at the 112th Precinct Stationhouse. Then, as PO Desir placed § 87(2)(b) in the patrol vehicle to be transported from the 112th Precinct Stationhouse to the 114th Precinct Stationhouse, PO Desir tightened the handcuffs.

As discussed above, statements could not be obtained from § 87(2)(b) or § 87(2)(b).

PO Desir did not recall hearing § 87(2)(b) complain about the tightness of the handcuffs or recall hearing him ask that they be loosened. PO Desir did not recall who placed § 87(2)(b) in the patrol vehicle to transport him to the 114th Precinct Stationhouse; however, § 87(2)(b) was handcuffed during transport. PO Desir said that he did not tighten § 87(2)(b)'s handcuffs at any point as he was being placed into the vehicle or as they were preparing to transport him to the 114th Precinct. PO Desir did not adjust § 87(2)(b)'s handcuffs or their positioning in any way.

PO Obafemi did not hear § 87(2)(b) complain about the tightness of the handcuffs or request that they be loosened at any point. He did not recall PO Desir tightening § 87(2)(b)'s handcuffs as he was prepared for transport or as he was placed into the RMP. PO Obafemi did not observe PO Desir adjust § 87(2)(b)'s handcuffs in any fashion once they were already secured.

Lt. Crespo and Sgt. Roach stated that they did not travel to the 112th Precinct Stationhouse after responding to the scene of the stop. As a result, neither was a witness the allegation that PO Desir tightened § 87(2)(b)'s handcuffs. As noted above, PO Lang and PO Piechowicz did not recall this incident.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) _____

- PO Desir has been a member of the service of three years and this is the first CCRB complaint to which he has been a subject.
- Lt. Crespo has been a member of the service for 16 years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim was filed with the Office of the Comptroller on August 27, 2018, and will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) _____

Squad No.: _____

